

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HAROLD R. FEEZLE, et al.,) Youngstown, Ohio
) Friday, March 31, 2023
Plaintiffs,) 9:18 a.m.
)
vs.) Case No. 4:23-cv-242
)

NORFOLK SOUTHERN RAILWAY)
CO., et al.,)
)
Defendants.)

* * * * *

GRAYCE EISLEY, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:23-cv-250
)

NORFOLK SOUTHERN RAILWAY)
COMPANY,)
)
Defendant.)

* * * * *

RAY E. HALL, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:23-cv-257
)

NORFOLK SOUTHERN RAILWAY)
CO., et al.,)
)
Defendants.)

* * * * *

ANDREW ERDOS, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:23-cv-268
)

NORFOLK SOUTHERN CORP.,)
et al.,)
)
Defendants.)

* * * * *

1 CHASE KINDER, et al.,)
2 Plaintiffs,)
3 vs.) Case No. 4:23-cv-292
4 NORFOLK SOUTHERN)
5 CORPORATION, et al.,)
6 Defendants.)
* * * * *)
7 AYSIA CANTERBURY, et al.,)
8 Plaintiffs,)
9 vs.) Case No. 4:23-cv-298
10 NORFOLK SOUTHERN)
11 CORPORATION, et al.,)
12 Defendants.)
* * * * *)
13 KRISTIN BATTAGLIA,)
14 et al.,)
15 Plaintiffs,)
16 vs.) Case No. 4:23-cv-303
17 NORFOLK SOUTHERN RAILWAY)
18 COMPANY, et al.,)
19 Defendants.)
* * * * *)
20 JESSICA DAVIS, et al.,)
21 Plaintiffs,)
22 vs.) Case No. 4:23-cv-308
23 NORFOLK SOUTHERN RAILWAY)
24 COMPANY, et al.,)
25 Defendants.)
* * * * *

(330) 884-7424

1 WILLIAM LEE FISHER,)
 et al.,)
 2)
 Plaintiffs,)
 3) Case No. 4:23-cv-350
 vs.)
 4)
 NORFOLK SOUTHERN)
 5 CORPORATION, et al.,)
)
 6 Defendants.)

* * * * *

7 ROBERT ATKINSON, et al.,)
)
 8 Plaintiffs,)
)
 9 vs.) Case No. 4:23-cv-363
)
 10 NORFOLK SOUTHERN)
 CORPORATION, et al.,)
 11)
 Defendants.)

* * * * *

12 CHRISTINA BODNAR, et al.,)
)
 13 Plaintiffs,)
)
 14 vs.) Case No. 4:23-cv-380
)
 15 NORFOLK SOUTHERN)
 16 CORPORATION, et al.,)
)
 17 Defendants.)

* * * * *

18 ROSEMARY MOZUCH, et al.,)
)
 19 Plaintiffs,)
)
 20 vs.) Case No. 4:23-cv-415
)
 21 NORFOLK SOUTHERN)
 CORPORATION, et al.,)
 22)
 Defendants.)

* * * * *

24
 25

1 BRENDA SMITH, et al.,)

2 Plaintiffs,)

3 vs.)

Case No. 4:23-cv-429

4 NORFOLK SOUTHERN)

5 CORPORATION, et al.,)

6 Defendants.)

* * * * *

7 JON LUKE AFFELTRANGER,)

8 et al.,)

9 Plaintiffs,)

10 vs.)

Case No. 4:23-cv-440

11 NORFOLK SOUTHERN)

12 CORPORATION, et al.,)

13 Defendants.)

* * * * *

14 GIOVANNI IRIZARRY,)

15 et al.,)

16 Plaintiffs,)

17 vs.)

Case No. 4:23-cv-479

18 NORFOLK SOUTHERN)

19 CORPORATION, et al.,)

20 Defendants.)

* * * * *

21 FRANK POLICARO, et al.,)

22 Plaintiffs,)

23 vs.)

Case No. 4:23-cv-495

24 NORFOLK SOUTHERN)

25 CORPORATION, et al.,)

Defendants.)

* * * * *

1 CERAMFAB, INC., et al.,)
2 Plaintiffs,)
3 vs.) Case No. 4:23-cv-509
4 NORFOLK SOUTHERN)
5 CORPORATION, et al.,)
6 Defendants.)
* * * * *)
7 EDWARD E. BARNHOUSE,)
8 et al.,)
9 Plaintiffs,)
10 vs.) Case No. 4:23-cv-510
11 NORFOLK SOUTHERN)
12 CORPORATION, et al.,)
13 Defendants.)
* * * * *)
14 ROBERT KURTZ, JR.,)
15 et al.,)
16 Plaintiffs,)
17 vs.) Case No. 4:23-cv-529
18 NORFOLK SOUTHERN)
19 CORPORATION, et al.,)
20 Defendants.)
* * * * *)
21 MICHAEL BUNTS, et al.,)
22 Plaintiffs,)
23 vs.) Case No. 4:23-cv-586
24 NORFOLK SOUTHERN RAILWAY)
25 CO., et al.,)
26 Defendants.)
* * * * *

1 SCOTT McALLER, et al.,)

)

2 Plaintiffs,)

)

3 vs.) Case No. 4:23-cv-604

)

4 NORFOLK SOUTHERN RAILWAY)

COMPANY, et al.,)

)

5 Defendants.)

6 * * * * *

MICHAEL LOYD, et al.,)

)

7 Plaintiffs,)

)

8 vs.) Case No. 4:23-cv-634

)

9 NORFOLK SOUTHERN RAILWAY)

10 COMPANY, et al.,)

)

11 Defendants.)

* * * * *

12
13 **TRANSCRIPT OF PROCEEDINGS**
14 **BEFORE THE HONORABLE BENITA Y. PEARSON**
15 **UNITED STATES DISTRICT JUDGE**

16 **HEARING**

17 **HELD VIA VIDEOCONFERENCE**

18
19
20 **MARY L. UPHOLD, RDR, CRR**

21 Thomas D. Lambros Federal Building and U.S. Courthouse

22 125 Market Street, Room 337

23 Youngstown, Ohio 44503-1780

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25 Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

- - -

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1 P R O C E E D I N G S

2 - - -

3 THE CLERK: The matter before the court is Case
4 Number 4:23-cv-0242, Harold Feezle, and others versus
09:18:33 5 Norfolk Southern Railway Company, and others, as well as the
6 other 29 cases.

7 THE COURT: Good morning, everyone. For those of
8 you who are able to stand or who needed to because you
9 weren't already in a standing posture, please feel free to
09:18:49 10 retake your seats. This is Judge Pearson speaking.

11 I can see that there are many of you there.
12 Pardon our brief delay in starting. I am still having some
13 technology issues. But if you're seeing me and hearing me,
14 it will satisfy me.

09:19:08 15 And let me test that by inviting certain of you
16 who I have given responsibility for making sure that the
17 many of you were invited to this Zoom conference introduce
18 yourselves.

19 Starting with the Feezle Leadership Group as
09:19:25 20 proposed, will you please introduce yourselves for the
21 record?

22 MR. KATZ: Good morning, Your Honor. Seth Katz
23 from Burg Simpson. Good to see you again. I am going to
24 introduce the members of the Feezle Leadership Group so that
09:19:38 25 this is done in an orderly fashion.

1 With me is Attorney Beth Graham from Grant &
2 Eisenhofer, Jayne Conroy from Simmons Hanly Conroy, Mike
3 Morgan from the Morgan & Morgan firm.

4 And then our proposed Plaintiffs' Executive
09:19:57 5 Committee members that are with us, Christopher Seeger, who
6 we also have asked to address the court briefly if you'll
7 allow it at some point; Michelle Kranz from Zoll & Kranz in
8 Toledo, Ohio, who is also our proposed plaintiffs' liaison
9 counsel; Mark Chalos from the Lieff Cabraser firm; Vincent
09:20:17 10 Greene from Motley Rice; James Bilsborrow from the Weitz &
11 Luxenberg firm; and Charles Schaffer from Levin Sedran &
12 Berman in Pennsylvania. And you'll also see on the camera
13 our proposed co-liaison from the Plaintiffs' Steering
14 Committee, Ashlie Case Sletvold.

09:20:38 15 And we've also got a non-video listen-only phone
16 line set up which has the other members of the proposed
17 Steering Committee, Working Committee and other lawyers with
18 later-filed cases that we've been coordinating with.

19 THE COURT: Fantastic. Thank you, Mr. Katz. I
09:20:56 20 heard you loudly and clearly. I was able to identify
21 certain of those whose names you mentioned. And I have made
22 a note of the name of Attorney Christopher Seeger and will
23 allow him to address me. And you might, or he might have to
24 prompt me at the appropriate time.

09:21:16 25 Fair enough, Mr. Katz?

1 MR. KATZ: Very well, Your Honor.

2 THE COURT: All right. Team Ohio, the Fisher
3 Leadership Team, will one of you kindly do what Mr. Katz has
4 done, introduce those of you present with the court today,
09:21:29 5 please?

6 MR. BERMAN: Yes, Your Honor. Good morning. This
7 is Steve Berman. Good to see you.

8 THE COURT: Thank you.

9 MR. BERMAN: With me from Team Ohio today is my
09:21:40 10 partner, Kristen Johnson.

11 Also with me is Jeffrey Goldenberg, who was
12 actually going to do some of our presentation. I don't know
13 if you can permit him to appear by video or not.

14 Also with me are members of the committee from the
09:21:57 15 Strauss Troy firm; and Mr. Nils Johnson from the Johnson &
16 Johnson firm; Ms. Elizabeth Bernard; there are lawyers here
17 from the Markovits Stock firm, and from -- Calvin Fayard is
18 here; and lawyers from the Bryant Law Center. So several.

19 THE COURT: Thank you.

09:22:22 20 MR. BERMAN: Thank you, Your Honor.

21 THE COURT: Exactly, several. Thank you for that,
22 Mr. Berman. By my words now, I will ask my staff and Madam
23 IT to do what's necessary to allow Attorney Goldenberg to
24 appear by video, if he is not already.

09:22:38 25 Attorney, don't worry if that means you

1 reconnecting in a different way. I am sure it will be
2 attended to quickly so that you can assist your proposed
3 team in the way that's most effective. Thank you for that.

09:22:58 4 Now, for the Cory Watson attorneys, counsel, will
5 you please do the same, introduce yourself and anyone else
6 assisting you today?

7 I am looking for Attorney Jon Conlin when I make
8 that request. Are you present with us, sir?

9 There it is. Meanwhile, Mr. Goldenberg has video.
09:23:22 10 Welcome.

11 MR. GOLDENBERG: Good morning, Your Honor.

12 THE COURT: Good morning.

13 Does anyone know, have you had any interactions
14 via this Zoom platform or otherwise with Attorney Jon Conlin
09:23:35 15 this morning?

16 MR. KATZ: Your Honor, we have not had contact
17 with Mr. Conlin this morning. We did speak with him after,
18 in the CeramFab case, the TRO he brought, we did coordinate
19 with him. I know he was on the e-mail that did receive the
09:23:50 20 Zoom information. But we haven't spoken with him this
21 morning.

22 THE COURT: Thank you. If Mr. Conlin presents
23 himself and one of you notice, including my staff, please
24 alert me.

09:24:05 25 And I would ask, Mr. Katz, is it possible for you

1 to dispatch maybe a staff member not assisting you during
2 this conference to reach out to Mr. Conlin so we can make
3 sure that all is well with him? He might be having a
4 difficulty. He might be in the group of those that doesn't
09:24:24 5 have audio or video access, and I'd just hate for him to be
6 absent due to some technical glitch.

7 Can you help in that way?

8 MR. KATZ: Absolutely, Your Honor. We're on it.

9 THE COURT: All right. Meanwhile, certainly

09:24:41 10 important to today's hearing is defense counsel. Will you
11 please introduce yourselves for the record?

12 MR. JOHNSTON: Yeah, Lawson Johnston on behalf of
13 the Norfolk defendants, Your Honor.

14 THE COURT: Good morning.

09:24:57 15 MR. JOHNSTON: Good morning.

16 THE COURT: And usually Mr. Clements is with you.
17 I see you, Mr. Clements. Are you able to hear and see me?

18 MR. CLEMENTS: Yes, Your Honor. Good morning.

19 Scott Clements from Norfolk Southern Railway Company and
09:25:08 20 Norfolk Southern Corporation.

21 THE COURT: Good morning. Is there anyone with
22 you, Messrs. Johnston and Clements today?

23 MR. JOHNSTON: No.

24 THE COURT: All right. Thank you for that.

09:25:17 25 And I do appreciate the many other of you who are

1 interested and active in this litigation, allowing
2 yourselves to be present in a way that won't allow you to
3 speak with the court directly, but I'm sure that you know
4 the opportunities, even if by a chat feature, to speak with
09:25:37 5 those who you have allowed to speak with the court on your
6 behalf. And if there is a need for me to pause to allow
7 those chat features to be reviewed before any counsel who
8 speaks concludes his or her comments, say so and I'll allow
9 it. That's only fair.

09:25:58 10 We have an aggressive agenda, but I do think it
11 can be managed and managed efficiently.

12 My hope today is to take up several topics, one of
13 which is, as indicated in the order setting this hearing, to
14 discuss with you further the potential consolidation of when
09:26:22 15 I issued the order was then 22 cases. I think if my count
16 is still accurate, it's now 30 individual cases residing on
17 my docket.

18 And we do know that the 30 on my docket are not
19 the only that exist or that have been filed in response to
09:26:37 20 the derailment, but I do believe, as I'm aware at this
21 moment I speak with you, those are the ones that are most
22 similar resulting from the same action that's brought the 30
23 cases to my docket.

24 So we'll talk about the partial consolidation --
09:26:56 25 pardon me, the potential consolidation, the filing of a

1 master consolidated complaint or what might otherwise be
2 considered an amended complaint, and responses to that.

3 But an important task I must undertake, and I
4 choose to undertake it first, is the obligation I have
09:27:19 5 pursuant to Rule 23(g) when I am considering an amended or
6 consolidated complaint, to take into consideration the
7 interests of all putative class members.

8 And as I'm sure each of you present, especially
9 those who will speak today, are aware of the obligations
09:27:44 10 placed on the court by Rule of Civil Procedure 23, and
11 particularly (g) (1), regarding appointing class counsel.

12 I have studied those requirements and I'll remark
13 that in response to my order, the motion filed to appoint
14 interim counsel, and that is the correct terminology,
09:28:09 15 because it would be interim class counsel, because this is
16 being done in advance of the certification of any now
17 putative class action.

18 So, Messrs. Johnston and Clements, I appreciate
19 your cooperativeness, but I do understand that we're taking
09:28:27 20 care of some important procedural matters without there
21 being any expectation that the defense has conceded that
22 there will be a Rule 23 class certified.

23 So having had the ability to study what's docketed
24 as ECF Number 25 in the Feezle case, the first-filed case,
09:28:49 25 which is the case on which I asked that you file your motion

1 and also status report, I'd like to first take up the matter
2 of the appointment of class counsel, especially that of
3 interim counsel.

4 And please know that I am privileged, the citizens
09:29:10 5 of the Northern District of Ohio, and particularly those who
6 live in East Palestine, are privileged to have more than one
7 set of counsel that's adequate, to use the terminology of
8 Rule 23, and interested in what's inevitably going to be a
9 very complex and difficult task.

09:29:34 10 And as Rule 23 requires, when I have more than one
11 interested set of counsel, my job is to appoint that best
12 able to represent the interests of the class members.

13 So with that, I'd like you, and I'll allow you by
14 prospective team, that being Feezle Leadership first, Team
09:30:02 15 Ohio, and then hopefully I'll have the Cory Watson attorneys
16 present to say what you'd like to amplify what you've
17 written.

18 And I say amplify, emphasize, because I've read
19 it, and the myriad attachments. I've done my best to make
09:30:17 20 myself well acquainted with what you shared, and I
21 appreciate the time and effort to pull those materials
22 together. But it's up to you to draw my attention to that
23 which, when I consider the factors in Rule 23, allows me to
24 identify the best able to serve the putative class.

09:30:40 25 With that, is there any question, anything about

1 the nature of your presentation that you'd like to ask me
2 about before you start making those presentations?

3 And again, just to keep it orderly, I will ask
4 team Feezle, any such question, anything that might make
09:30:59 5 your presentation easier?

6 MR. KATZ: No, thank you, Your Honor. We are
7 prepared to proceed.

8 THE COURT: Thank you for that.

9 Team Ohio or Fisher Leadership Team, anything I
09:31:09 10 can ask or any technological needs you might want to ask
11 about before we start the presentations?

12 MR. BERMAN: No, Your Honor. Steve Berman. We're
13 ready to go when you are.

14 THE COURT: Thank you. And just because I'm
09:31:23 15 hoping Mr. Conlin has appeared, any word on Attorney Jon
16 Conlin, who represents CeramFab, et al., and the Cory Watson
17 attorneys team, any word on him yet?

18 MR. JONES: Your Honor, this is Andy Jones on
19 behalf of Jon Conlin and Cory Watson this morning. I
09:31:46 20 apologize. We had connectivity issues. The only question I
21 have is I have tried to turn on my camera. I would love to
22 turn that on for you, but it says the host has stopped my
23 ability to do that.

24 THE COURT: And that might be. If it wasn't made
09:32:00 25 known that you -- and it's Attorney Helms, is it?

1 MR. JONES: I'm sorry, Attorney Andy Jones.

2 THE COURT: Andy Jones, pardon that. What I will
3 do now is ask my staff to assist you. And do be aware that
4 that assistance, so as to not interfere with the record,
09:32:18 5 might -- there you are, it's done.

6 Okay. Now, are you the speaker for the Cory
7 Watson attorneys, sir?

8 MR. JONES: Yes, Your Honor, I am.

9 THE COURT: Fantastic. So we'll go in order, in
09:32:30 10 the order presented in the motion to appoint interim class
11 counsel: Feezle Leadership, Team Ohio/Fisher, and then Cory
12 Watson, attorneys presented by Mr. Attorney Andy Jones.

13 With that, why don't we start. Feezle Leadership,
14 you have my attention.

09:32:51 15 MR. KATZ: Thank you, Your Honor. Seth Katz from
16 Burg Simpson for the Feezle Leadership Group.

17 Your Honor, as you pointed out, I don't intend to
18 rehash what's in our papers, but I do think that going
19 through how we built the Feezle Leadership team will give
09:33:05 20 you an idea of why the Feezle Leadership Group is the group
21 best able to represent all the different variety of
22 plaintiffs in the putative class.

23 We listened to Your Honor at our various hearings,
24 including the March 1st hearing, where you advised us of
09:33:29 25 your views that we can always find roles for those who want

1 to be robustly employed and the need to have foot soldiers
2 to carry out the tasks that we will be assigned if we're
3 appointed as interim class counsel.

4 So we set out to build an inclusive leadership
09:33:48 5 team that was led at the top by very experienced lawyers,
6 committed lawyers, and law firms that have a long track
7 record of seeing cases to the end, handling very complex
8 cases.

9 And we think we've accomplished that with a great
09:34:02 10 mix of local law firms, both Ohio and Pennsylvania, because
11 Ohio communities are not the only ones impacted, as well as
12 national law firms that have the resources, the knowledge
13 and the experience to guide this case to where it needs to
14 go.

09:34:21 15 As you're aware from the papers, we held a meeting
16 of all the lawyers we were aware of in Cleveland on March
17 3rd. Members of the Fisher Leadership Group were invited
18 and attended. And our goal there was to try to build
19 consensus. But also to be inclusive, make sure everybody
09:34:44 20 knew what was going on.

21 And as more cases got filed after March 3rd,
22 Ms. Graham and I contacted those lawyers, as the court asked
23 us to do, and we think we've carried out that assignment
24 well. We hope the court sees it the same way.

09:35:01 25 And we spoke with the lawyers in those cases, and

1 we evaluated their interest level in participating, their
2 backgrounds, and what they would bring to the case to help
3 us build what really amounts to a law firm comprised of
4 other law firms to adequately handle this case.

09:35:22 5 As the court knows from reading the papers in
6 footnote 9, we offered to include members of the Fisher
7 Leadership Group in our organization.

8 We actually created the position of Community
9 Liaison, which we've never had in a case before, because of
09:35:42 10 the need for local, on-the-ground lawyers with knowledge of
11 the case and what was going on, to be able to communicate
12 with the community.

13 We even discussed it with Mr. Nils Johnson at the
14 March 3rd meeting.

09:35:55 15 This is a big case, as Your Honor noted. It's a
16 very important case. And there's going to be a lot of work.
17 And the work needs to get done regardless of which
18 leadership group Your Honor appoints, regardless of the
19 number of lawyers involved. The work has to get done.

09:36:12 20 THE COURT: Mr. Katz, Judge Pearson here. And
21 sorry I didn't warn you of this. You might have become
22 accustomed that it's one thing I do to keep pace to
23 understand the information as I receive it, is to
24 occasionally stop the speaker to ask a question. So
09:36:31 25 hopefully I don't throw any of you off when I do that, but

1 it's important, and I appreciate you emphasizing, drawing my
2 attention to note 9.

3 For those of you keeping pace with us, note 9 is
4 at the bottom of page 15 of docket number ECF with
09:36:50 5 electronically file number 25. And it's also page ID number
6 162 in the Feezle case.

7 I wonder, and I wondered as I studied these
8 papers, if -- and so that all of you know, what I will do
9 today is to receive information, take some time, not long.
09:37:13 10 I am pushing you, and I will continue to push myself, but I
11 will take some time to consider how what I've read, what
12 I've heard today matches up with the Rule 23(g) obligations.

13 One thought I had that maybe you can help me with
14 today on behalf of the Feezle Leadership, after I've made my
09:37:32 15 determination, and I will, while I'll issue minutes today,
16 I'll issue an order after today, early part of next week is
17 my anticipation, identifying what I've decided based on all
18 that I have in terms of the class counsel structure, and the
19 attorneys to be a part of that leadership.

09:37:58 20 Is there still an opportunity for the suggestion
21 made in paragraph 9?

22 MR. KATZ: Your Honor, yes. And, in fact, as
23 recently as Wednesday evening, Ms. Conroy and Mr. Goldenberg
24 had a conversation, and we proposed in an e-mail to
09:38:22 25 Mr. Goldenberg that we would add him to our Executive

1 Committee. We would add Mr. Parry to our Steering
2 Committee. And we would add Mr. Nils Johnson to be a
3 Community Liaison with Attorney Nick Amato, who we already
4 have in that position.

09:38:40 5 So there is still an opportunity -- our view is
6 one of inclusiveness, and to make sure that this community
7 gets the best representation possible. There is going to be
8 a lot of work. And the work needs to be done.

9 So the short answer is yes, and the longer answer
09:38:57 10 is, we've continued to keep that opportunity open, as well
11 as other members of the Fisher Leadership Group that are
12 interested in working cooperatively, having working roles.

13 THE COURT: All right. Let me ask this clarifying
14 question. And it will require your response, but quite
09:39:18 15 possibly even a response from Messrs. Goldenberg, Parry and
16 Johnson. And I know there are two Nils Johnsons. I'm not
17 particularly certain right now which one of the two you are
18 referring to.

19 As I consider, as we talk today, but later, when I
09:39:36 20 contemplate and ultimately rule by early next week, may I
21 consider these enlargements of the Executive, Steering and
22 Community Liaison roles in the way you've just identified?
23 Is your answer to that yes at this moment, Mr. Katz?

24 MR. KATZ: My answer to that is unequivocally yes.

09:39:56 25 THE COURT: Mr. Goldenberg, I can see you. May I

1 consider that when I consider all that I will once this
2 hearing closes?

3 MR. GOLDENBERG: Yes, Your Honor. I just want to
4 clarify that I reached out to Ms. Conroy on Wednesday and
09:40:13 5 presented an alternative that combined the two slates that
6 are before the court, Team Ohio and then the team that Seth
7 and Jayne are leading, and proposed a more streamlined
8 leadership.

9 But yet we understand, as Team Ohio, many of our
09:40:35 10 firms have worked with almost all of the firms that are in
11 what I call the consensus group, which is about over 30
12 firms at this point. We have worked with most of those
13 firms collectively. We would anticipate, if we were to be
14 appointed as Team Ohio to lead, that we would continue to
09:40:54 15 work with those firms as this litigation goes forward, we
16 would try to be inclusive in that respect, and certainly
17 keep everyone informed of the litigation as it develops.

18 Ms. Conroy responded back -- well, to be more
19 specific, our proposal was two co-leads, one from each
09:41:13 20 group, five EC members from each group, so ten total, to be
21 selected by each group. And then one Community Liaison from
22 each group, so two total.

23 And then Ms. Conroy responded back with their
24 proposal. And at that point, there was no further
09:41:34 25 communication. I think that was as of yesterday, because we

1 had this hearing coming up. But we do understand the
2 court's desire for inclusiveness. We just feel as to
3 leadership, it should be a little more concentrated, as I
4 just explained. That's what we propose.

09:41:57 5 THE COURT: All right.

6 MR. GOLDENBERG: Yes.

7 THE COURT: And so -- I thought it was yes. I
8 will tell you, my notes indicate a qualified yes. So let me
9 just ask quickly. I don't want to interfere with Mr. Katz's
09:42:13 10 presentation too much.

11 Mr. Parry, is there any reason I should not
12 consider that because you would not be interested in joining
13 the Steering Committee proposed by the Feezle Leadership?

14 MR. PARRY: Well, Your Honor, we would certainly
09:42:28 15 be interested in occupying any position that the court would
16 order. Frankly, I've worked with many of the other lawyers
17 in the other group. I think I've worked with Mr. Katz very
18 successfully in the first year he was a lawyer. So we would
19 be happy to work with them in any position.

09:42:49 20 Our view of the leadership in this case from day
21 one has been that there needs to be some negotiation with
22 respect to the co-lead positions in the case. Their
23 position on this has been unyielding since day one. They
24 have four co-lead attorneys, and they're not interested in
09:43:11 25 listening to any other proposition.

1 So our view is that's something that should be
2 negotiated, but obviously Your Honor has to make the final
3 call on that and we will occupy happily any position Your
4 Honor would choose. Thank you.

09:43:29 5 THE COURT: Thank you, Mr. Parry. Is the Nils
6 Johnson referenced by Mr. Katz with us and able to tell me
7 if that's something I can consider going forward, or if he
8 would prefer that I did not?

9 MR. KATZ: I think he is trying to get his camera
09:43:49 10 turned on, Your Honor.

11 THE COURT: Thank you.

12 And I am happy to hear your voice even if I
13 can't -- there you are. At least -- okay.

14 MR. NILS PAUL JOHNSON: Good morning, Judge.

09:43:58 15 THE COURT: Now I know which of the two it is. It
16 is the elder. I think you and your son have different
17 middle names.

18 MR. NILS PAUL JOHNSON: Yes.

19 THE COURT: Technically he's not a junior, right?

09:44:07 20 MR. NILS PAUL JOHNSON: Yes, Your Honor, that's
21 true.

22 THE COURT: All right. So, sir, I know you were
23 hearing even before I could see you. I just want to know
24 that as I contemplate what I am being told and what I've
09:44:19 25 read, may I consider you as a Community Liaison member to

1 the Feezle Leadership as has been suggested by Mr. Katz?

2 MR. NILS PAUL JOHNSON: Yes, Your Honor. And I
3 have a long time and good working relationship with Attorney
4 Amato as well, which was already mentioned.

09:44:38 5 THE COURT: Thank you. Thank you all for that.

6 Mr. Katz, thank you for allowing me to clarify.
7 Back to you.

8 MR. KATZ: Of course. Thank you, Your Honor.

9 I think where I left off was this is a big case.
09:44:52 10 There is a lot of work. There will be a lot of work to get
11 done before we reach the finish line in this case, however
12 long that takes.

13 And the proposed four co-leads in this litigation,
14 myself, Ms. Graham, Ms. Conroy and Mr. Morgan, as Your Honor
09:45:09 15 is aware, we've been working cooperatively basically since
16 the days following the derailment, coordinating our experts
17 to go out and collect samples amongst ourselves.

18 We've been coordinating very well. We've worked
19 together very well, not only in this case, but our four
09:45:27 20 firms have a very long history of working together in other
21 cases to have successful conclusions of those cases.

22 The four firms have the resources to lead this
23 litigation. And the four individuals have good
24 relationships with all the lawyers that we've had involved
09:45:46 25 in the Feezle Leadership Group.

1 We've also been working very cooperatively with
2 proposed members of the Executive Committee on obtaining
3 other experts in multiple disciplines. As Your Honor asked
4 us to coordinate experts in soil collection after the
09:46:07 5 CeramFab TRO hearing, we've done that.

6 So we've been inclusive. We've been operating as
7 a well-oiled machine as our four co-leads. And that's the
8 reason we think that the number four is the right number, no
9 more, no less, and why we think we are the right four
09:46:24 10 individuals to steer this ship for you.

11 What we've done in creating the other committees,
12 including the Working Committee, is assess what we think the
13 needs of the case are. And part of our job will be to make
14 sure there's no duplication of work, there's no waste of
09:46:43 15 work, but also to make sure that all of the work is done at
16 the highest level. To make sure that these communities that
17 have been impacted get justice, and get justice as quickly
18 as they can given the confines of our legal system.

19 There are many, many different interests at play
09:47:02 20 here. There are a lot of different types of putative class
21 members. There are many Ohio communities that are impacted.
22 And our group has 18 different Ohio law firms in it,
23 including my Cincinnati office, which we've had for 16
24 years.

09:47:25 25 One example that I'd like to point out to the

1 court is our proposed Executive Committee member, Michelle
2 Kranz, as proposed liaison as well. She is a member of the
3 Ohio cattle farmers community, and her family has
4 participated in the 4-H and the FFA program showing cattle
09:47:46 5 for years. We receive many calls that farmers in northeast
6 Ohio, their livestock are dying after being exposed to the
7 groundwater or just the initial plume. And Ms. Kranz has
8 been instrumental in helping us get experts to help us
9 assess those issues quickly. She is also the
09:48:10 10 President-Elect of the Ohio State Bar and will take her role
11 in July.

12 We've also got Pennsylvania communities that have
13 been impacted, and we have firms on our Steering Committee
14 from -- and Executive Committee from Pennsylvania. Some of
09:48:23 15 those firms and some of those cases had intended to be filed
16 in the Western District.

17 We communicated with them. We explained to them
18 our vision of the case. We explained to them what we've
19 done to that point in time. And after those conversations,
09:48:38 20 they were very interested and did file their cases in the
21 Northern District of Ohio, and some of them were filed
22 directly and assigned to you, some of them were later
23 transferred to you.

24 Now, there is a single case filed in the Western
09:48:54 25 District, and I know Mr. Clements wants to address that at

1 the end. We spoke with that attorney as well. And they
2 represent a school district just across the border. And
3 they filed in the Western District of Pennsylvania. We'll
4 come back to that when Mr. Clements addresses the court.

09:49:11

5 And then we've got various national law firms with
6 the resources and experience to guide this case and work on
7 this case.

09:49:29

8 This is a case that has the national eye. I mean,
9 I can't think of the last time we've heard so many news
10 reports of train derailments across the country, other than
11 the fact that this train derailed in East Palestine and has
12 really put the national eye and the national spotlight on
13 derailment cases.

09:49:47

14 So this case, while it does directly impact these
15 local communities, it is in the national spotlight, and
16 hopefully will effect change and make our railways safer
17 nationwide, make all the communities safer where rails go
18 through them.

09:50:03

19 We've got a team that's built to address many
20 legal issues; preemption; CERCLA; railroad regulations;
21 lawyers who are experienced in handling derailment cases,
22 trying derailment cases; environmental cases; class actions;
23 mass actions; issues surrounding livestock; impacts on
24 businesses that are within the area that they can't get
09:50:24 25 their customers there, they are closed for one reason or

1 another; impacts on individual, whether it's acute health or
2 long-term health; economic losses that the individuals have
3 suffered; property damage and property value drop that the
4 individuals have suffered; lawyers that are involved in the
09:50:43 5 political interests; lawyers who have represented
6 governmental entities and municipalities are involved in the
7 Feezle Leadership Group; appellate lawyers; and lawyers who
8 have in their skill set creating and overseeing complex
9 settlements that last years and potentially decades.

09:51:07 10 So our team that we've put together is put
11 together designed to handle and have lawyers with vast
12 experience that will cover every aspect of this case, cover
13 all putative class members, and be the arm of the court that
14 can get this case done.

09:51:28 15 We have taken these various skills to build a law
16 firm of law firms, as I said. And we have built a team that
17 is assembled to get work done efficiently, effectively, and
18 at the highest levels to bring justice for the communities.

09:51:47 19 We will be able to multitrack depositions. We
20 will be able to write multiple briefs at one time. Because
21 we don't have just one lawyer who can handle derailments, we
22 have several that can take the deposition and be ready when
23 the witnesses are ready. Scheduling will not become a
24 problem for our team.

09:52:01 25 And it will all be done under the direction of the

1 four proposed co-leads to ensure no waste, and avoid
2 unnecessary duplication.

3 Our team has also very effectively been able to
4 coordinate with Norfolk Southern's counsel. Now, we haven't
09:52:17 5 always seen eye to eye, and when we haven't, we've been able
6 to come to the court. But we've been able to effectively
7 communicate and reach compromises where they are
8 appropriate. And that will continue.

9 Norfolk Southern is a multibillion dollar company,
09:52:34 10 and so far, as is their right, they have shown no indication
11 of anything other than vigorously defending all of these
12 cases. Our leadership team is prepared for a long
13 litigation should that happen, and we've got a history with
14 firms that have shown their ability and willingness to see
09:52:54 15 all cases to the end.

16 One other thing that's important in how we decided
17 to build our Feezle Leadership team and why we were so
18 inclusive. We have talked with the members of the
19 community, and we have learned, they don't trust Norfolk
09:53:13 20 Southern, and they don't necessarily trust the information
21 they're getting from the EPA or other agencies. We've heard
22 it from clients repeatedly.

23 And those lawyers -- or those clients, those
24 community members that have hired individual lawyers have
09:53:29 25 developed a relationship of trust with those lawyers. One

1 of the reasons we've been so inclusive, in addition to the
2 amount of work, was to make sure that those members of the
3 community can go to someone that they've developed a
4 relationship with, trust with, get information, know that
09:53:47 5 that lawyer is part of the group leading this organization.

6 It may not be the co-leads, it may not be the
7 Executive Committee, but they are involved. They will be
8 knowledgeable. They will be involved in the aspects where
9 their skill set fits. But they will know about everything.
09:54:06 10 So those community members can go to people they trust to
11 get information. That's why we think inclusivity is so
12 important.

13 And the final point I'd like to make, Your Honor,
14 is that I think our group, we are just of a different
09:54:22 15 philosophy, and it is one of inclusion. We'll have the
16 leadership at the top and everybody else involved.

17 As I mentioned earlier in response to Your Honor's
18 question, we did make a proposal to add Mr. Goldenberg,
19 Mr. Parry and Mr. Nils Johnson. That was rejected.

09:54:45 20 As I said, we are still very open to having them
21 appointed to be part of our group. While we understood it
22 would add three more lawyers, but we would be adding three
23 lawyers who are very, very good at what they do.

24 As Mr. Parry indicated, he and I worked together,
09:55:03 25 it wasn't my first year out of law school, but it was my

1 first year as a plaintiffs' lawyer. I was on a trial team
2 that he tried a class action in St. Clair County, Illinois,
3 and I learned a lot from Mr. Parry and I have a lot of
4 respect for him. My partner, Melanie Bailey, who you've met
09:55:19 5 on the prior hearings, used to work for Mr. Parry.
6 Mr. Parry is a great class action lawyer. No ifs, ands or
7 buts about it.

8 Mr. Goldenberg has a tremendous amount of
9 experience handling environmental cases. He also has known
09:55:33 10 the people at my Cincinnati office for many years.

11 And Mr. Nils Johnson is clearly a pillar of the
12 community there. He knows Mr. Amato well and is spoken very
13 highly of.

14 We are more than happy to add those three lawyers
09:55:47 15 to our leadership group, as well as any of the other lawyers
16 that want to do work to the Working Committees.

17 I am going to ask Ms. Graham if I've left anything
18 out of our presentation or if she's got anything to add.

19 MS. GRAHAM: Thank you, Attorney Katz. No. I
09:56:03 20 think you've addressed everything. Unless the judge has any
21 specific questions for me, I am just going to put myself
22 back on mute.

23 MR. KATZ: And then if Your Honor doesn't have
24 questions for Ms. Graham, I would like permission for
09:56:15 25 Mr. Seeger to briefly address the court.

1 THE COURT: I don't have questions for either you
2 or Ms. Graham at this time. Thank you for all that you've
3 said. I might have one question after I hear from
4 Mr. Seeger, but I'll wait, hearing from you first,
09:56:32 5 Mr. Seeger. You have my attention.

6 MR. SEEGER: Good morning, Your Honor. It is an
7 honor to be before you, and to even be considered to be
8 involved in a case like this, because it's so important.

9 Mr. Katz did a really good job I think hitting on
09:56:47 10 all the points, so I'm not going to duplicate anything he
11 said, maybe other than to add that when Mr. Katz worked with
12 Mr. Parry, he worked for me. Mr. Katz used to be my
13 partner. We're no longer partners. But I know him very
14 well. I know his abilities.

09:57:02 15 And I'd like to highlight one thing about Seth and
16 Jayne and Beth and Mike Morgan, and that is that to lead a
17 case, and I've led a number of them, Your Honor, I know
18 we've never met, but if you look at my resume, I was a lead
19 in the NFL -- I am currently a lead in the NFL concussion
09:57:21 20 settlement, I led Vioxx, I'm involved with 3M. And I
21 typically seek leadership or co-lead appointments, and I am
22 not in this case because I am very comfortable with the work
23 that they have done and the way they have led this case by
24 trying to build consensus.

09:57:36 25 I also know them to be lawyers who work well with

1 others. And I think that's going to be really important in
2 a complex case like this, where you're representing diverse
3 interests, and in such an important decision for a judge,
4 and I don't mean to be presumptuous in anticipating your
09:57:53 5 important decisions, but picking a committee to lead a case
6 is a pretty important decision. It's like building a
7 virtual law firm.

8 And the four leads who are applying here have
9 really done a lot of work, and have worked very hard. They
09:58:08 10 reached out to me as soon as we got our case on file and
11 were very open.

12 So I wanted to just point that out, because I
13 think it's really important.

14 And the amount of work they've done and in the
09:58:21 15 skill sets that I've observed, Ms. Conroy, for example, and
16 I worked together in the opioid litigation in front of Judge
17 Polster. She's not only known nationally as a great trial
18 lawyer, but she was involved in all the settlement
19 discussions.

09:58:34 20 So the leads in this case have demonstrated, in my
21 opinion, an ability to be tough when they need to be and
22 aggressive, but also to manage cases efficiently and to be
23 reasonable when it's appropriate to be reasonable. And I
24 wanted to point that out.

09:58:48 25 Now, having said that, I'll make a final comment.

1 I too have worked with almost every lawyer I think on the
2 Zoom I'm looking at. And Your Honor has a wealth of riches.
3 You really have a great, highly skilled group of lawyers,
4 and it's a tough decision.

09:59:02 5 I like the approach that the leads from the Feezle
6 Group have taken, which is to be inclusive and try to
7 incorporate everybody and try to put them where they need to
8 be. We can't all lead; we can't all be on PECs; and we
9 can't all be on the PSC.

09:59:20 10 Sometimes we have to create subcommittees to bring
11 new young lawyers who may not have the resources to fund the
12 litigation like this, but need the opportunities in big
13 cases. And we create, under the auspices of the leadership
14 and these sites, those opportunities by creating
09:59:37 15 subcommittees that they can work on and get that experience.

16 So, Your Honor, I am here if you have any
17 questions for me, but I just wanted to point that out. And
18 I thank you for giving me the time to do that.

19 THE COURT: Thank you, Mr. Seeger, for what you've
09:59:48 20 added.

21 Mr. Katz, there's only one topic, and it's usually
22 the more difficult to discuss. And I don't expect details
23 or finality. And I don't mind sharing with all of you, I
24 don't anticipate making part of my order anything other than
10:00:07 25 my expectation that all fees and non-taxable costs will be

1 reasonable. I'd like to hear an assurance that if chosen,
2 the Feezle Leadership will keep that in mind from this
3 moment forward.

4 MR. KATZ: Absolutely, Your Honor. And that will
10:00:26 5 be one of the tasks that the four co-leads will oversee, to
6 make sure that the work done is reasonable, to make sure
7 there is no waste, make sure there is no waste on costs, and
8 to make sure that there is no unnecessary duplication.
9 Because all of those things go into the taxable fees and
10:00:45 10 costs.

11 You know, but we do need to hire experts. And I
12 know the court is familiar with some of the experts we've
13 already hired and the work that they've done. But it's
14 going to be incumbent upon us, and we promise that we will
10:00:59 15 make sure that the work that the experts do is reasonable as
16 well.

17 THE COURT: And I appreciate that assurance. And
18 I have confidence in it. And I'll just add another reason.
19 It's not just to manage the fees and costs of the
10:01:15 20 litigation, but also, at some point, if plaintiffs,
21 collectively, are successful in this litigation to any
22 degree, there would be some distribution of whatever benefit
23 might result.

24 And I want to make sure, on behalf of the true
10:01:32 25 litigants, the residents of East Palestine, whether it's an

1 individual or a business owner, that they're treated fairly,
2 that there is a proportional distribution that isn't overly
3 subsumed by the hard-working fees and costs of the
4 attorneys.

10:01:52 5 Make sense?

6 MR. KATZ: Absolutely, Your Honor. And you have
7 our assurance that we will keep that in mind throughout the
8 litigation, beginning -- we've already done that, but
9 continuing from today forward.

10:02:05 10 THE COURT: Great.

11 With that, if the Feezle Leadership is satisfied,
12 I am as well regarding your presentation. No other
13 questions for you at this time.

14 I'll invite the Team Ohio/Fisher Leadership to
10:02:20 15 address me. And keep in mind the questions that I asked. I
16 might not have the would you add to or consider enlarging
17 your proposed team that I had for Mr. Katz, but I will
18 certainly be interested in knowing about the reasonableness
19 of fees and costs among the many other factors Rule 23(g)
10:02:43 20 lays out.

21 Am I right in thinking, Mr. Berman, you will
22 start, and then include Mr. Goldenberg at some point?

23 MR. BERMAN: Yes, Your Honor. I'm going to be
24 actually very brief, because I do want to let my Ohio
10:02:55 25 members talk today, because I believe strongly, I think you

1 can tell from our papers. So if Mr. Johnson could be
2 permitted, there he is, at some point. So I am going to
3 talk just very briefly, and then Mr. Goldenberg and
4 Mr. Johnson.

10:03:14 5 Now, Your Honor, of course I read about this case
6 in the papers and it was in Ohio and I'm based out of
7 Seattle, and I'm thinking, you know, wow, that's a tragedy I
8 would not be involved in this litigation.

9 And then I got a call from Mr. Johnson, whose
10:03:29 10 daughter works at my firm. She's a partner, a very capable
11 complex litigation partner, Kristen Johnson, who is on the
12 phone, and he talked to me about what was happening in the
13 community.

14 And he said, you know, "We need a national law
10:03:43 15 firm, but I live in this community. I have neighbors who
16 have been harmed. Every day of my life I'm living with
17 this. I need a law firm that I can trust at the end of the
18 day, that the people in my community can look at me and
19 said, 'You did a good job.' And so I am imploring you,
10:04:02 20 Steve, to get involved."

21 And that's how I got involved, and that's how I've
22 been approaching it from the get-go, to be listening to what
23 I call Team Ohio, and bringing my national experience to
24 help the residents recover.

10:04:17 25 Your Honor, just by -- you know, I am in Seattle,

1 but in two of the largest issues that the State of Ohio has
2 faced, tobacco and opioids, they hired me. I think that
3 says a lot about my leadership.

4 One of the reasons I didn't go along with the
10:04:34 5 other group's proposal, in addition to the fact that they
6 absolutely won't consider me in any position, they have not
7 offered me a position, is it's too big.

8 You asked about fees and costs. The way I look at
9 their proposal, they have 37 different firms on that
10:04:55 10 proposal. And the only way -- I'm just going to be candid
11 about it. The only way that you get that many firms is if
12 you promised everyone work. That's why they vote for you.
13 And 38 firms, looking at all the pleadings, doing all the
14 work, is going to drive up the fees and costs.

10:05:12 15 And so our team -- and there are many fine lawyers
16 on the other proposal. Mr. Seeger and I have been co-lead
17 counsel in many cases. I have worked with Ms. Conroy, and
18 we've worked together. But they're bloated. They're too
19 big. And the residents of the community, at the end of the
10:05:29 20 day, they want a team that's not going to rack up too much
21 money in fees and expenses.

22 So we approached it in a much leaner way, and we
23 also approach it in a way that we tried to match up, as
24 Mr. Goldenberg is going to explain, what's needed in a case.

10:05:49 25 So we have Mr. Fayard, who has tried more railroad

1 accident cases maybe than any lawyer in the country.

2 We have Mr. Goldenberg, who is a specialist in
3 environmental law.

4 We've matched up the needs to the local firms.

10:06:08 5 It was our idea to have a liaison, not theirs.

6 And now they have one. But the minute I looked at this
7 problem, I said, "We need people on the ground who are going
8 to be tasked with interacting with the community," and
9 that's why we suggested that position and the Johnson voice
10:06:29 10 to take on that role.

11 So having said that, unless you have specific
12 questions of me, Your Honor, I am going to let
13 Mr. Goldenberg and Mr. Johnson take over.

14 THE COURT: I think I do, and I'm not precisely
10:06:43 15 sure of my articulation, but maybe you'll be able to answer.
16 And I appreciate your candor, in that using the Feezle
17 Leadership proposal is too big. And I know from the
18 proposal submitted by your team, that indeed it is organized
19 differently.

10:07:04 20 And I'll be equally candid. Without understanding
21 differently, I worry that your organization might have
22 inherent redundancies that although a big team, the Feezle
23 Leadership doesn't necessarily reveal in its writing.

24 I worry, for example, Mr. Berman, that the
10:07:28 25 derailment NTSB group might have its own discovery and

1 expert component, and the environmental might have its own
2 discovery and expert component, and down the line, medical
3 monitoring, damages. I am just, without you or
4 Mr. Goldenberg or Johnson helping me, wondering, where are
10:07:56 5 the economies of scale? Will there be any consolidation of
6 discovery efforts regardless of which discipline the
7 discovery is of?

8 Am I articulating that in a way that allows you to
9 help me, Mr. Berman?

10:08:16 10 MR. BERMAN: Yes, Your Honor. I would be glad to
11 try to answer your question.

12 THE COURT: Thank you.

13 MR. BERMAN: So I actually think that our proposal
14 is more streamlined. Rather than having all these
10:08:24 15 committees with undefined roles, which is what the other
16 side has, we decided to say, "Okay, I am lead counsel, and I
17 am going to be involved in overseeing everything."

18 And then, to be efficient, to be more efficient,
19 we're going to say to Mr. Fayard, for example, "You focus on
10:08:44 20 the railroad stuff. So if there's a deposition coming up,
21 that's your thing. We'll coordinate among all the team
22 members, but you really are in charge of the railroad
23 depositions and track."

24 "Mr. Goldenberg, you are in charge of looking at
10:09:01 25 the water and air issues." Right? "We're all going to work

1 on it together, but you kind of take the lead on that."

2 And Mr. Coates would take the lead on medical
3 monitors.

4 We would all be coordinating. And actually, I
10:09:15 5 think it's way more efficient than having this huge
6 structure that they have, with just many more damages --
7 excuse me, many more people weighing in on various subjects.

8 Again, what I tried to do in structuring this was
9 to take the expertise of these lawyers, like Mr. Goldenberg,
10:09:36 10 and say, "Okay, you focus on the environmental stuff." So I
11 actually think we're being more efficient, if that answers
12 Your Honor's question.

13 THE COURT: It certainly helps me. And I'll keep
14 that in mind as I hear from the other members of your team.
10:09:49 15 And as you have grown accustomed to, I will ask if I'm still
16 puzzling over some point.

17 Thank you, Mr. Berman. Anything more before I go
18 to either Mr. Goldenberg or Mr. Johnson?

19 MR. BERMAN: Not unless you have any questions,
10:10:03 20 Your Honor. Thank you for hearing me.

21 THE COURT: Thank you for your interest.

22 The one of you, I won't dictate the order, is it
23 you, Mr. Goldenberg, next?

24 MR. GOLDENBERG: I believe so, Your Honor.

10:10:16 25 Thank you for this opportunity to present before

1 the court. I do want to say, you know, Team Ohio is
2 comprised of eight firms, five of which are Ohio-based, two
3 of which are local to the region affected by the derailment.
4 And we think Team Ohio represents a good -- the best core
10:10:39 5 from which to create a leadership structure.

6 To the point the court raised about potentially
7 adding to one group or the other, we also recognize that in
8 our submission to the court, in a footnote, I don't exactly
9 have the number in front of me, but we understand the court
10:11:02 10 certainly has the authority under Rule 23 to pick and choose
11 from both of the leadership slates that have been put before
12 you. We would welcome any additions that the court thinks
13 would enhance Team Ohio. So I just want to add that point
14 likewise.

10:11:23 15 So to the extent the court is considering adding
16 attorneys to the Feezle Group, which I referred to as the
17 consensus group earlier, likewise, the court could do the
18 same with our group. And we would happily work with that
19 structure, because as you noted early on, under Rule 23,
10:11:44 20 it's the court's responsibility, and it is the court that
21 will make the ultimate decision. And, you know, the
22 community is the one that will benefit from that, the
23 knowledge of the court in that regard.

24 I am going to go through briefly each of the firms
10:12:01 25 that we have in Team Ohio and discuss what we think are the

1 highlights for those firms, and then I am going to bring up
2 a couple other points that we did address briefly in our
3 submission, but not in detail, particularly our experience
4 with the Ohio Attorney General, which is going to be
5 important here because of the actions that the Ohio Attorney
6 General has filed here that I believe are before this court.

7 I would also note that I think yesterday, the
8 federal government, through the U.S. EPA, brought a cost
9 recovery and several penalties actions as well as certain
10 injunctive relief that I think is going to ultimately end up
11 in front of you as well.

12 The other thing I want to bring to the court's
13 attention and maybe shed a little more light and progress
14 that we've made is our desire to bring in and create
15 opportunities for certain regional law schools and other
16 colleges. We think this litigation may present a unique
17 opportunity, of course, with the court's approval, to
18 implement a program like that.

19 Team Ohio we think is the right choice, Your
20 Honor. Because the Johnson & Johnson firm and Elizabeth
21 Bernard, both of which are local to the region, collectively
22 have been representing the citizens and the community and
23 the businesses of East Palestine and surrounding areas for
24 over 135 years, they and Team Ohio can facilitate and foster
25 the trust with those families and businesses that have been

1 most affected by the February 3rd derailment. After all,
2 these are the firms that are going to have to live with the
3 results for decades to come. These are the firms that are
4 going to deal with the people directly, because these are
10:13:59 5 the firms that know the people, the families, their friends,
6 their businesses that they go to.

7 Because Hagens Berman is one of the largest, most
8 successful, well financed class action law firms in the
9 country, and because Hagens Berman's partner, Kristen
10:14:19 10 Johnson, who I will note was on this call earlier but had
11 another litigation demand at 10:00, and so she had to leave,
12 they -- she is from this -- as the court knows, she is from
13 this community, she was born and raised in this community,
14 and is a very accomplished complex and class action
10:14:38 15 litigator. She will be very involved in this case.

16 Kristen Johnson is a litigator. She tries cases.
17 She won a \$142 million RICO verdict against a very large
18 drug company. And drug companies fight, as we know, very
19 hard.

10:14:57 20 So Team Ohio, with Hagens Berman as one of our
21 leads, can stand toe to toe with Norfolk Southern. They are
22 uniquely motivated because of who the attorneys are that are
23 involved to tirelessly fight for the rights of their
24 neighbors, their friends and the community as a whole.

10:15:19 25 I would also note, Your Honor, that Hagens Berman,

1 while they're in Seattle, secured the largest verdict in
2 Columbiana County history at the time that verdict was
3 obtained. And that's, of course, one of the counties that's
4 been mostly affected by the derailment. So Hagens Berman
10:15:41 5 has a presence and they have been successful in this region.

6 Because Fayard & Honeycutt and the Bryant Law
7 Center are the most experienced firms in the country when it
8 comes to litigating railroad derailment cases, Your Honor,
9 collectively litigating 14 separate derailments, including,
10:16:04 10 and this is very important, I believe, two that involve
11 vinyl chloride, going back as far as 1982, they and Team
12 Ohio know what it takes to efficiently and successfully
13 litigate this case and reach a fair, reasonable, and
14 hopefully expedited resolution of this litigation.

10:16:28 15 And because Strauss & Troy has maintained a
16 consistent presence in this community through Ron Parry
17 following the derailment and has met with hundreds of local
18 residents, they and Team Ohio now represent over 500
19 clients, including residents and businesses, we understand
10:16:46 20 the disruption caused and the long-term economic and health
21 consequences and concerns this community and the surrounding
22 communities, including those in Pennsylvania, will have now,
23 a year from now, and 20 years from now.

24 Because Goldenberg Schneider has extensive
10:17:08 25 environmental health and safety expertise, they and Team

1 Ohio understand the critical environmental health and safety
2 issues created by this disaster, and have already retained
3 and dispatched experts that are qualified in soil, water,
4 ash and air sampling, railroad engineering, railroad
10:17:28 5 operations, bearing failure, which appears to be the cause
6 of the -- one of the causes of the derailment, and tank car
7 failure.

8 And because Markovits, Stock & DeMarco has decades
9 of experience creating, implementing and overseeing medical
10:17:47 10 monitoring programs, some of which are in Ohio, like
11 Fernald, they and Team Ohio are qualified to seek, implement
12 an effective, meaningful and community accepted, which is
13 very important, medical monitoring program here. And this
14 would include the use of independent, court-appointed
10:18:10 15 environmental and medical experts.

16 And then, as I mentioned, I wanted to point out
17 Team Ohio's Attorney General experience. Mr. Berman noted
18 Ohio opioid litigation against certain drug manufacturers
19 which is currently ongoing on behalf of the State of Ohio.

10:18:32 20 Markovits, Stock & DeMarco currently have
21 litigation involving DuPont and others related to PFOA,
22 contamination from the Washington Works facility on the Ohio
23 River near Marietta.

24 Markovits, Stock & DeMarco recently represented
10:18:48 25 the State of Ohio against Monsanto for historical PCB

1 contamination. That case successfully resolved last year
2 with an \$80 million settlement.

3 And then, of course, there's the tobacco Medicaid
4 reimbursement litigation from the late 1990s, early 2000,
10:19:11 5 which successfully resolved with a \$9.86 billion settlement
6 in favor of the State of Ohio, which involved my firm, and
7 was led by Hagens Berman.

8 I do want to note one thing, because it has -- I
9 don't believe it's come up yet, and I think whoever the
10:19:29 10 leadership team is, whether it's a combination of the two or
11 one or the other, Team Ohio is committed to early resolution
12 efforts here. This is important. Whether it's successful
13 or not, it is important. It is important to the community.
14 It is important that we can come up and stand in front of
10:19:50 15 our constituents and say -- our class members -- "We went to
16 Norfolk Southern because we know you need help now."

17 If appointed to lead this litigation, Team Ohio
18 will approach Norfolk Southern to explore an early global
19 resolution that will provide immediate, short-term and
10:20:13 20 long-term relief, and adequate remedies for the community as
21 a whole.

22 Team Ohio understands that the community would
23 prefer a timely, meaningful and effective settlement, and
24 would expect whoever its representatives are to represent
10:20:31 25 them, to seek a resolution sooner rather than later. And we

1 are prepared to do that. In fact, anyone should be prepared
2 to do that for these constituents.

3 Lastly, Your Honor, I want to touch on what we put
4 in our papers and give you an update on that, which is that
10:20:49 5 we think this might be a good opportunity to create learning
6 opportunities for regional law schools and other schools and
7 their students.

8 With the court's approval, we will work with
9 regional law schools to create these learning opportunities
10:21:07 10 for interested students. This would include the University
11 of Akron. And I believe Johnson & Johnson firm has already
12 contacted them, and there is interest on their end. That's
13 because I believe they require externship hours for law
14 school, as well as pro bono hours for graduation.

10:21:24 15 Cleveland-Marshall, Johnson & Johnson has also
16 contacted that firm.

17 And lastly, Youngstown State University, which
18 does not have a law school, but the undergraduates do
19 participate in a moot court team, and they also have prelaw
10:21:39 20 students, of course.

21 And so that is something that is unique to Team
22 Ohio. Obviously, whichever leadership structure gets
23 assigned to this case, whether it's a combination of the two
24 or not, this may be something the court may want to ask
10:21:57 25 Johnson & Johnson to take on to consider.

1 So in conclusion, Your Honor, the people of East
2 Palestine and the surrounding regions deserve a team of
3 lawyers committed to do all that is necessary to fight for
4 their futures, because this is a fight for the future of
10:22:10 5 these people, these families, these businesses and this
6 community and the surrounding communities.

7 Team Ohio is made up of lawyers that are the most
8 qualified, experienced and motivated, in our opinion, to
9 best represent the thousands of individuals, families and
10:22:30 10 businesses impacted by the derailment.

11 Most importantly, Team Ohio will stand by East
12 Palestine and the surrounding communities long after this
13 litigation ends.

14 So I would ask the court, I am happy to address
10:22:46 15 any questions about any of the firms, and I believe there
16 are representatives from each of these firms from Team Ohio
17 on the call, if the court has any other questions specific
18 to them; otherwise, I will turn it over to Mr. Nils Johnson.

19 THE COURT: Thank you. Just one clarifying
10:23:03 20 question, Mr. Goldenberg, regarding the participation of any
21 law school or college student. I have written in my notes
22 appropriate roles, but I wondered, did you have some better
23 articulation how you would see any one of those students
24 being involved?

10:23:24 25 MR. GOLDENBERG: I know Nils P. Johnson is on the

1 phone. He's been handling most of this. And I'll defer to
2 him for the answer to that question.

3 I would just note that I see a lot of different
4 opportunities, many of which could be related to coming into
10:23:40 5 the community to sit down and interview with some of the
6 affected residents and the businesses. That would be one
7 avenue.

8 The other would be to participate as an observer,
9 of course with the court permission and certain court
10:23:56 10 processes, including potentially depositions, if that's
11 appropriate.

12 But otherwise, Nils P. has been taking the lead on
13 this, and I will turn it over to Nils.

14 MR. NILS PETER JOHNSON: Thanks, Jeff.

10:24:13 15 THE COURT: Thank you, Mr. Goldenberg.

16 Mr. Johnson, you have my attention.

17 MR. NILS PETER JOHNSON: Thank you, Your Honor.

18 I have been in touch with the University of
19 Akron's law school program. Jeff indicated they have a
10:24:25 20 30-hour pro bono requirement in order to graduate.

21 As a preliminary matter, I explained to them sort
22 of the consolidation process afoot that I personally had no
23 immediate authority to be promising much of anything to
24 these students, but on the understanding that that may
10:24:42 25 transpire someday, I started to learn from these programs

1 what their own internal criteria would permit them to do.
2 And those -- whatever responsibilities the student might
3 have would be circumscribed by those. But in addition,
4 certainly to the goalposts of Local Rule 83.6 and whatever
10:25:04 5 Your Honor would be pleased to see them participate in.

6 I think Attorney Goldenberg had some good ideas.
7 Participating in hearings, going into the communities, being
8 able to do, you know, a little gumshoeing. Right?
9 Interviewing community members, and serving that liaison
10:25:23 10 role, which I see as twofold.

11 One, it would require the attorney to obviously
12 proceed into the community to do what? To explain to them
13 where the litigation stands, what's happening, what are all
14 these lawyers doing. Right? What's taking so long. Right?

10:25:48 15 The second part of that responsibility would be
16 taking information from the community: "What is happening
17 in the community? Tell me about your family. What's
18 happening with your neighbors? Tell me, what are you
19 hearing?"

10:26:00 20 The flip side of that Community Liaison role would
21 be taking that information from the community, bringing it
22 back to the attorneys so that they might, you know, most
23 efficiently and accurately wage the war on the litigation.

24 So that role is critical in this situation where,
10:26:19 25 you know, Attorney Katz, at the outset, seemed to

1 acknowledge that there is a high level of distrust in East
2 Palestine right now. There's a lot of unfamiliar faces in
3 town. And the faith in authority figures I don't think is
4 very high. I am not hearing that from our clients and so
10:26:42 5 many friends that I have.

6 And so to restore that, our team felt, by
7 explaining to the residents that there are two proposed
8 candidacies here, one of 38 law firms and one of 8 law
9 firms, they seemed more receptive to the smaller one, for
10:26:57 10 maybe obvious reasons. You know, economy is a scale.
11 Right? And, you know, allowing us to participate on a
12 lean-and-mean basis.

13 When this first came up, when the derailment
14 initially happened, our phones started to ring, Your Honor,
10:27:19 15 at our law offices. You may know, we don't hold ourselves
16 out as participating in mass tort train derailment class
17 action litigation. That is not a skill set of ours.

18 So as a matter of professional conduct, we
19 associated with firms that have the best skill set in those
10:27:35 20 subject matter areas. And for that reason, I think it's
21 very appropriate for Hagens Berman to be involved here.
22 Steve Berman's reputation speaks for itself. And I would
23 certainly be remiss if I didn't say I thoroughly enjoy
24 working with my older sister.

10:27:50 25 And those synergies, when explained to the

1 community, they really liked the sound of our proposal, Your
2 Honor. And I know that we have an administrative task at
3 hand and an organizational task at hand, but I think the
4 communities' perspective on the size of the team, that they
10:28:10 5 will know, and they are going to be mindful of, you know,
6 that resolution.

7 And so I'd be remiss if I didn't share with you
8 some of the feedback I had received in the course of working
9 in the community.

10:28:22 10 THE COURT: Well, I appreciate that, but I think
11 you and every other attorney on this call will understand
12 that it's on my shoulders the decision rests, not that of
13 the community.

14 MR. NILS PETER JOHNSON: Yes, ma'am.

10:28:35 15 THE COURT: In fact, it is often the task of the
16 judge to do what is best for the community even if it is at
17 odds with what the community might perceive as being best
18 for itself.

19 But I do appreciate all you have done and what you
10:28:48 20 have said. Anything more, Mr. Johnson?

21 MR. NILS PETER JOHNSON: No, ma'am.

22 THE COURT: All right. Have I heard fully then
23 the presentation amplifying your papers from the Team Ohio
24 or Fisher team? Have I heard you well, Mr. Berman?

10:29:01 25 MR. BERMAN: You've heard us well, Your Honor.

1 Thank you.

2 THE COURT: Thank you. And thank you for, either
3 because you anticipated before the hearing or after my
4 questions to Feezle Leadership, giving me a fulsome,
5 complete presentation.

10:29:13

6 Mr. Jones, your team, I will refer to it as it is
7 in the papers, ECF 25, Cory Watson attorneys, is, to my
8 understanding, the only team that does not agree on the
9 consolidation in accordance with Rule 42. I am interested
10 in hearing about that, as well as your proposal for leading
11 the entire putative class litigation.

10:29:37

12 You have my attention.

13 MR. JONES: Sure. Thank you, Your Honor.

14 And just to be clear, we do not have an opinion on
15 the class leadership structure. And from all appearances,
16 both are highly qualified. My firm has worked with most, if
17 not all, of these lawyers in various cases over the years.
18 And I think that the class cases will be well represented by
19 either slate. And so that's not our position.

10:29:54

20 What we are saying is that there are going to be
21 cases in this litigation, including the CeramFab case that's
22 already on file, but definitely several dozen others that
23 are just not classable, in our view. And so we don't
24 believe those class -- or those cases, rather, should be
25 made to fit within the purview of the class leadership

10:30:14

10:30:31

1 structure.

2 THE COURT: Well, as you know, and I tried to make
3 it clear earlier, and hopefully I did, especially to
4 alleviate any concerns that either defense counsel might
5 have had, while we work together now about the prospect of
6 class counsel, interim class counsel, because there's been
7 no appointment or no certification of a class, it's
8 anticipated that that will be what happens.

9 And, of course, just as the defense might, in
10 scheduling matters that have been written about in the
11 status report, oppose class certification, you, on behalf of
12 CeramFab and the other clients you represent, will be able
13 to oppose class certification. I will certainly take up the
14 papers as I should. And if I need additional information,
15 may even schedule oral argument. But that's premature, not
16 the primary purpose why we're here.

17 So if there is no agreement to either, nothing
18 more to be said about that from the Cory Watson attorneys,
19 maybe it's best I turn my attention to allow the defense to
20 say what, if any. Again, my decision, but I don't want to
21 leave out defense counsel on this important decision I'll be
22 making about the appointment of interim class counsel.

23 Okay, Mr. Jones? Is there anything more at this
24 time?

25 MR. JONES: Well, just one more thing, if I may,

1 Your Honor.

2 So our concern is also just the case track and
3 these individual cases getting bogged down in procedures
4 that are just specific to class actions. You know, we all
10:32:21 5 know that class certification --

6 THE COURT: Well, why don't I interrupt you to
7 tell you that once I've heard from the defense about
8 appointment of interim class counsel, I will talk a bit
9 about scheduling, as has been written in the status report
10:32:41 10 docketed as ECF 26. So timing will be the primary
11 discussion there.

12 So let me ask you to hold that thought. Make a
13 note if you must so that you don't lose track of it. All
14 right?

10:32:57 15 MR. JONES: Thank you, Your Honor.

16 THE COURT: Certainly.

17 Defense counsel, as I indicated to Mr. Johnson
18 earlier, the decision is mine. It's one of the gifts the
19 trial court judgeship gives me, is an opportunity to make
10:33:14 20 tough calls daily. Yesterday I had to decide whether and
21 for how long to send a one-legged person who is likely to
22 lose his only leg very soon to prison and for how long. I
23 did. I didn't give him 20 years, but pretty close to it.
24 So I am equal to the task.

10:33:35 25 But I don't want to close this part of the hearing

1 without allowing you, Mr. Johnston or Mr. Clements, to say
2 something if you thought you could inform the decision that
3 I will soon make.

4 May I call on you first, Mr. Johnston?

10:33:48 5 MR. JOHNSTON: Yes. I am going to defer to
6 Mr. Clements if it's okay, Your Honor.

7 THE COURT: Absolutely fine. Mr. Clements.

8 MR. CLEMENTS: Yes, Your Honor. Just briefly.

9 I would just say that since the onset of the
10:34:01 10 litigation, we have worked with various of the plaintiffs'
11 lawyers, many of whom are here today. We've had a very good
12 working relationship with Mr. Katz and Ms. Graham since the
13 onset of the TRO in the Erdos case, and we've worked
14 together with them, and other lawyers that are here today
10:34:24 15 just with respect to scheduling, sampling work that's been
16 done at the track and inspection of the railcars.

17 You know, we are impressed by the presentations of
18 both of the proposed leadership structures and would be
19 pleased to work with whoever is chosen to represent the
10:34:45 20 class members.

21 THE COURT: Thank you. And I can certainly join
22 in those comments. Impressed by those who have spoken today
23 and appreciate what's been imparted.

24 What I would like to do is taking up on the topic
10:34:59 25 introduced by Mr. Jones last and his concern about

1 scheduling.

2 When I issue the ruling regarding the appointment
3 of interim class counsel, leadership and those topics, I
4 will also, because I believe I have what's necessary, and
10:35:20 5 certainly will by the conclusion of this hearing, give you
6 guidance on the timing of the case and how it proceeds,
7 meaning the date by which I would like the amended or
8 consolidated class action complaint filed, the response date
9 to that. And if the response is other than an answer, an
10:35:44 10 opportunity for an opposition and reply.

11 And you've given me some head start on those
12 topics in your status report. There is a note in that
13 report at ECF Number 26, Mr. Jones, that indicates at
14 footnote 1, that's at page 3, page ID 524 of ECF 26, that
10:36:10 15 your client doesn't believe in the consolidation, doesn't
16 believe in its appropriateness, doesn't consent, and it is
17 written further in the motion about that. So don't think
18 I've not considered that.

19 But the great likelihood is I am going to order
10:36:32 20 the matter consolidated. I am going to order there be the
21 filing of an amended consolidated class action. I will
22 choose the leadership, leaving some leeway for manipulation
23 within the four corners of my order.

24 So against that backdrop, counsel, I would like to
10:36:51 25 just hear you briefly. And I say that because I appreciate

1 your time given already this morning to some of the
2 disagreement regarding the scheduling.

3 For instance, plaintiffs', at least I interpret
4 that to be Feezle and Team Ohio, representatives agree that
10:37:14 5 45 days after my order would be sufficient time for the
6 filing of the consolidated class action complaint.

7 What is apparently not in agreement is how long
8 the defense would have to respond.

9 So, Messrs. Clements and Johnston, you suggest
10:37:33 10 that you be given 60 days. The plaintiffs seem to agree
11 that 30 would be sufficient. I will remark that I add to
12 the time, whether it's plaintiffs' 30 or defendants' 60, the
13 time we've already had together.

14 As we know, the first-filed case was the 7th of
10:37:59 15 February, without consolidation, because of your
16 cooperativeness and waiving service, your answer or response
17 would be due by April 10th, I believe.

18 So when I consider 60, I am interested in knowing
19 why the additional time. Do you anticipate a surprise,
10:38:23 20 something that you've not already been made aware of in one
21 of the individually filed cases?

22 The defense counsel who would like to speak to me,
23 will you do so now?

24 MR. CLEMENTS: Your Honor, this is Scott Clements.
10:38:38 25 I mean, I think the issue with the 60 days is that, you

1 know, obviously we have not seen what the amended
2 consolidated complaint would consist of, and if there's
3 going to be more than one amended consolidated complaint.

4 And so, you know, we just would need some time to
10:38:56 5 be able to evaluate those complaints with respect to filing
6 any responsive pleading. And, you know, that's why we
7 suggested the 60 days.

8 But I think certainly if the plaintiff is going to
9 be given 45 days, as they requested, we would at least want
10:39:12 10 45 days to be able to respond.

11 So I hope that answers Your Honor's question.

12 THE COURT: It does. It certainly gives me
13 something more to think about. Thank you for that.

14 The status report also indicates a preference that
10:39:33 15 I stay responses in the individual cases to allow for an
16 omnibus comprehensive response. I think that's wise. But I
17 do want to intone at this juncture that at some point, I
18 would close administratively, terminate every case and
19 leaving only the operative amended consolidated class
10:40:02 20 action.

21 And, Mr. Jones, I will tell you at this moment, I
22 would include CeramFab's in that. If you were eager to urge
23 me differently than you already have had an opportunity to
24 do so, I'd build in some opportunity for that.

10:40:20 25 But staying would only mean until the consolidated

1 class action is filed, I wouldn't expect the defendants to
2 file responses to the 30 pending cases. That's just fair.
3 But at some point after the filing of the consolidated class
4 action complaint, the other cases would cease to exist as
10:40:42 5 individual cases. So make a note of that.

6 The next place where I would like you to weigh in,
7 however, is the disagreement on the length of time for
8 plaintiffs -- for, pardon me, defendants to reply.

9 Again, plaintiffs suggest a shorter period of
10:41:03 10 time, which, Mr. Jones, I will remark is in line with your
11 clients' desire to keep the pace of litigation going at a
12 reasonable clip.

13 Defendants, you asked for it 7 days later. You
14 asked for 21 as opposed to 14 days. Is there any explicit
10:41:26 15 reason for the additional 7 days? I'll remark that 14 days
16 is more in line with what's typical even in a complex case.

17 But if you have some reason at this time for
18 thinking you might need 21 to reply, if there's a response
19 other than an answer, tell me now. Mr. Clements?

10:41:47 20 MR. CLEMENTS: Yes, Your Honor. I mean, I don't
21 have anything specific to add, only that, you know, we're
22 sort of dealing with the unknown at this point without
23 having seen any amended consolidated complaints, and if
24 there's going to be multiple of those and what those consist
10:42:01 25 of.

1 THE COURT: Fair response.

2 If you don't mind, let me engage you again,
3 Mr. Clements. And this time anticipating, because, again,
4 sharing Mr. Jones' concern, this order, and I'll refer to it
10:42:17 5 perhaps as an omnibus order regarding class counsel, but
6 moving forward to scheduling of the response and any
7 opposition in reply, I would also set your Rule -- your case
8 management conference date, and in that require that you've
9 consulted among yourselves and produced a Rule 26(f) report.

10:42:40 10 Plaintiffs suggest that 14 days after the filing
11 of the consolidated complaint is enough time.

12 Defense, you suggest 30 days. And if there is
13 some explicit reason, I'd like to be informed so that I give
14 it the attention you'd expect.

10:43:01 15 Mr. Clements.

16 MR. CLEMENTS: Yes, Your Honor. I mean, again, it
17 just goes back to this issue with, you know, what are the
18 amended consolidated complaints going to allege? How many
19 are there going to be? And those are going to form sort of
10:43:16 20 the scope of, you know, discovery and the Rule 26(f) meeting
21 for counsel.

22 And we just think we would need additional time,
23 more than 14 days in order to be able to review that, digest
24 what the claims are, and be able to discuss with counsel
10:43:29 25 what the discovery plan would be.

1 THE COURT: So let me ask -- I will start with
2 you, Mr. Clements, and then ask members of the leadership
3 team for Feezle and Fisher, or Team Ohio to respond.

4 You have indicated more than once that you don't
10:43:51 5 know if there will be more than one consolidated complaint.
6 Do you have some reason for that concern?

7 MR. CLEMENTS: Well, I know I raised the issue I
8 think at one point a little while ago with Mr. Katz and
9 Ms. Graham, just about, like, is there going to be one
10:44:05 10 amended consolidated complaint, or are there going to be,
11 you know, multiple of them? I think that may have been
12 raised somewhere in the papers at one point.

13 So at this time, we just don't know the answer to
14 that question.

10:44:20 15 THE COURT: In fairness to us all, why don't you,
16 plaintiffs' counsel, Mr. Katz, Ms. Graham, do you anticipate
17 more than one consolidated class action complaint?

18 MS. GRAHAM: Your Honor, Elizabeth Graham. What I
19 can tell the court is that, first of all, we can get our
10:44:40 20 complaint on file within 30 days as opposed to 45, if that
21 would make the parody where the defendants would respond
22 within 30 days more equal.

23 I can also represent that having reviewed all the
24 complaints on file, what we intend to do is -- it's not
10:44:57 25 going to be anything new that Mr. Clements hasn't seen. We

1 are going to blend the subclasses that are contained in the
2 various complaints, address the issues that are specific to
3 both Pennsylvania and Ohio, and that will be in one master
4 pleading.

10:45:11 5 There are some governmental entities, I believe a
6 school district that has a case in the Western District of
7 Pennsylvania that has not been before Your Honor. So to the
8 extent that that might be a separate line of cases, we would
9 put that in a separate complaint. But candidly, that's not
10:45:31 10 before Your Honor at the moment, so we haven't addressed it
11 with that counsel.

12 But notwithstanding, there will be nothing new or
13 surprising in our papers that Mr. Clements hasn't seen
14 already, just it will be in a consolidated format.

10:45:45 15 THE COURT: Thank you for that.

16 And can I ask you to go further, if you can, to
17 respond to the concern of Mr. Jones. I have heard two
18 general concerns. One is the slowing down, bogging was a
19 term he used, but I also thought maybe his concern implied a
10:46:07 20 dissimilarity, an inability to reconcile CeramFab with the
21 other 29 cases.

22 Do you anticipate that problem as Feezle
23 Leadership?

24 MS. GRAHAM: We do not, Your Honor. We represent
10:46:25 25 several entities such as CeramFab, businesses that are in

1 the area. I believe that many of the other class cases also
2 include businesses. So we don't see anything that's
3 dramatically different in the CeramFab case.

4 Obviously, at some point, should the court certify
10:46:44 5 a class, CeramFab will have the opportunity to object to a
6 motion for certification. CeramFab may have the opportunity
7 to opt out of the class at various stages in the proceeding.

8 But we don't see their existence as any impediment
9 to filing a consolidated master complaint that includes a
10:47:02 10 subclass of businesses.

11 THE COURT: Fair enough.

12 Mr. Berman or Mr. Goldenberg -- Mr. Berman, it
13 looks like you've unmuted. Have you, sir?

14 MR. BERMAN: Yes, Your Honor, I have unmuted.

10:47:14 15 THE COURT: Okay.

16 MR. BERMAN: It was our idea that we could get the
17 complaint up and filed in 30 days, not 45, which I think
18 Ms. Graham's group agreed to. So we were hoping to get
19 ready in 30 days to file the complaint.

10:47:26 20 We too represent businesses. We don't see any
21 problem in including their claims in the master class
22 complaint. We think that should be done. We have done that
23 in many similar cases like this. For example, the Exxon
24 Valdez oil spill case, we had a business class. So we don't
10:47:49 25 see any problem there either.

1 THE COURT: All right. Thank you for that.

2 And I think we're all aware, again, referring to
3 the factors under Rule 23(g), that class counsel would be
4 required to fairly and adequately represent all of the
5 parties on their side. That would be CeramFab and every
6 other plaintiff, whether putative class or -- well, putative
7 class.

8 Thank you. That's very helpful to me.

9 And I will, don't be shocked, I won't dictate to
10 you now, but I will write. I will, again, hewing to what
11 allows you to be reasonable and efficient in your work, but
12 we'll trod in this case. We'll keep it in the forefront, as
13 it deservedly should be.

14 There are just a couple of other matters, if you
15 don't mind.

16 Mr. Jones, the first goes to your client. As you
17 know, I held a hearing. I denied your client's motion for a
18 TRO. But -- because it wasn't technically appropriate, and
19 I certainly had not calendared a hearing on the preliminary
20 injunction. That motion still stands.

21 I thought after my ruling was made known on the
22 record, that, as based on the discussions had, especially
23 those regarding steps to be taken going forward to satisfy
24 the concerns of CeramFab that Mr. Conlin understood.

25 I ask you now, will you withdraw the motion for

1 preliminary injunction?

2 MR. JONES: Yes, Your Honor, we will do that. And
3 we have taken the steps that you had outlined in your order
4 as well.

10:49:42 5 THE COURT: Thank you. I had no lack of
6 confidence that you, your colleagues and the others
7 wouldn't. Thank you for that.

8 I will note, if you don't mind, I can save you the
9 administrative step and note it as withdrawn, indicate that
10:49:55 10 in my minutes. Okay with you?

11 MR. JONES: That is okay with me. Thank you, Your
12 Honor.

13 THE COURT: And that doesn't offend any other
14 attorney, does it? If so, say so. If not offended, you
10:50:06 15 don't need to speak up.

16 (No reply.)

17 THE COURT: The only other matter, and I call this
18 a housekeeping matter, regards, and this is for the Team
19 Ohio Leadership as proposed.

10:50:19 20 There is pending a motion for expedited relief
21 under Rule 23(d), as in "David." You wrote about it in your
22 papers. And I could certainly understand why you would have
23 been concerned about your clients waiving certain rights by
24 accepting assistance needed immediately. I have read the
10:50:42 25 response, and also the reply.

1 I will remark that there is no affidavit causing
2 me to be concerned that some particular resident business or
3 individual resident of East Palestine harbors a worry of the
4 sort voiced in a rather early-filed motion. I think you
10:51:01 5 know more now than you knew then.

6 What's your preference regarding this motion for
7 expedited relief, Mr. Berman or the one of you who would
8 like to speak? I would like to remove it from being active
9 on my docket, thinking that it's premature is probably not
10:51:25 10 the best word. It's a worry that is not reasonably held,
11 that accepting help at this moment is going to bar a
12 plaintiff who exists now or one who might later join by
13 opting in of any relief ordered by the court or offered in
14 the interim by an agency or even Defendant Norfolk Southern.

10:51:47 15 Mr. Goldenberg, it looks like you're ready to
16 engage me.

17 MR. GOLDENBERG: Thank you, Your Honor. That was
18 actually filed in the case originally filed with the
19 Markovits, Stock & DeMarco firm and Mr. Coates. I think he
10:52:02 20 dropped off the call because of a technical concern that
21 happened and I don't see him listed as being on.

22 I would -- personally, I agree with the court,
23 with everything you just said. I would like an opportunity
24 maybe to speak with Mr. Coates after this hearing, and then
10:52:22 25 I can follow up directly with the court or the court's

1 clerk, whatever the court prefers, and confirm that
2 Mr. Coates is on board with what I feel is the same as the
3 court, the court's decision, or preference as to how to
4 proceed on that.

10:52:42 5 THE COURT: Thank you for volunteering to do that.
6 And I think that professional courtesy is what we should do.
7 So if you would take it upon yourself, Mr. Goldenberg, to
8 speak with Mr. Markovits or the representative best able to
9 speak for that firm. And you're right, it was filed in the
10:53:04 10 case regarding Ibel, Tina Ibel and Sheryl Tomor, among
11 others.

12 And I think you and I are in agreement. What you
13 can do is simply, again, striving to preserve energies, a
14 brief notice on the docket. Because he's not here, I
10:53:26 15 wouldn't want you to make a notice to the court that he
16 would misunderstand or not agree with. So just an
17 indication indicating that it's withdrawn or he'd like it to
18 persist.

19 Fair enough?

10:53:42 20 MR. GOLDENBERG: Yes, Your Honor.

21 THE COURT: All right. One last note I'll share
22 with you, because I am eager to know if any of you are
23 opposed to this.

24 One intention I have, believing that there will be
10:53:57 25 a requirement for a consolidated class action complaint, is

1 to change its title from that of the otherwise first-named
2 case, Feezle, to In Re: East Palestine. Would anyone come
3 up with a better title or find that objectionable?

4 Mr. Goldenberg, can I call on you first since
10:54:21 5 you're still unmuted?

6 MR. GOLDENBERG: Yes. I think that's fine, Your
7 Honor, and appropriate.

8 THE COURT: Okay. Mr. Katz?

9 MR. KATZ: Your Honor, we think that's actually
10:54:28 10 the best way to handle this.

11 THE COURT: Right. It would be most evident, as
12 Mr. Nils Johnson has indicated, one concern is what's
13 happening, are we being represented? Yes. In Re: East
14 Palestine.

10:54:43 15 Mr. Clements, anything objectionable about that?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: All right. I think I've gotten to the
18 end of my to-do list. You have been wonderful. I've kept
19 you nearly two hours. None of you have begged for a recess,
10:54:56 20 although you have deserved the right to do so.

21 I will docket minutes. I will take some time to
22 further contemplate what you have shared. Know I appreciate
23 it. I know that you are all doing your best. And unless
24 there is something more we should discuss, I will close the
10:55:14 25 record.

1 On behalf of leadership for Feezle, anything more
2 at this time?

3 MR. KATZ: No, Your Honor. Thank you for all the
4 consideration today.

10:55:23 5 THE COURT: You deserve it, each of you and all
6 those you represent.

7 Anything more on behalf of Team Ohio or Fisher?

8 MR. BERMAN: No, Your Honor. Thank you for
9 listening to us. Appreciate your time here.

10:55:34 10 THE COURT: Mr. Berman, when you've been in the
11 seat as long as I have, it's always easy to listen to
12 well-prepared, well-counseled and reasonable attorneys.
13 Thank you all for being that. Even when you disagree, you
14 do it agreeably, and I appreciate that.

10:55:50 15 Mr. Jones, anything more before I close the
16 record?

17 MR. JONES: No, Your Honor. Thank you so much for
18 your time and attention this morning.

19 THE COURT: And thank you. And thank you also for
10:56:01 20 your courageousness. Not always easy to be a dissenting
21 voice, but you necessarily add to the record and I have
22 appreciated that.

23 Thank you all.

24 Defense counsel, let me just check with you to see
10:56:12 25 if there is anything more before I close today's record.

1 MR. CLEMENTS: Yes, Your Honor. Just very
2 briefly. Mr. Katz alluded to this and Ms. Graham alluded to
3 it a little bit earlier. But we wanted to just make Your
4 Honor aware that there is a case pending in the Western
10:56:31 5 District of Pennsylvania that was brought on behalf of
6 Blackhawk School District, which is a district that
7 encompasses parts of Beaver County and adjoining Lawrence
8 County, both of which are on the Ohio border.

9 That litigation is recently instituted, and it is
10:56:49 10 our intention to file a motion to transfer venue to the
11 Northern District of Ohio.

12 So we wanted to just mention that to you so you
13 were aware of it and you weren't caught off guard at some
14 later point. So that's number one.

10:57:06 15 Secondly, there were a couple newly filed cases
16 recently. One is the Loyd case, L-o-y-d, which is a class
17 action case which was filed at 23-, I think it's 634. That
18 was a transfer to Your Honor. And I assume that counsel in
19 that case is part of this proceeding.

10:57:26 20 There was a separate-filed case under the same
21 plaintiff name, Loyd, 23-626, which is a declaratory
22 judgment action for costs under CERCLA that I think is
23 before Judge Lioi, if I'm pronouncing her name correctly.

24 So I wanted to make Your Honor just aware of that.
10:57:50 25 And I don't know if the plan is to have that transferred to

1 you, but I wanted Your Honor to be aware that there were
2 companion cases in the Loyd matter, and that one has not
3 been transferred to you.

4 And then there was a case that was filed
10:58:01 5 yesterday, Mann, M-a-n-n, versus Norfolk Southern, 23-672,
6 that was assigned to Judge Adams. That's an individually
7 filed case and not a putative class action.

8 THE COURT: Thank you. I appreciate being made
9 aware of the Blackhawk School District case and your plan to
10:58:24 10 ask the Western District of Pennsylvania judge to transfer
11 it to the Northern District of Ohio. I am not aware of its
12 contents beyond what's been mentioned by you and earlier by
13 a colleague on the other side. As you -- but I'll await
14 what you write. And I will trust that my colleague in the
10:58:44 15 Western District of Pennsylvania will assess it under the
16 rules as it should be and decide whether or not to make that
17 transfer.

18 When a matter is transferred, and you likely know
19 some of this, it doesn't mean it will end up on my docket.
10:58:59 20 It will be transferred to the Northern District of Ohio. It
21 will be drawn by the judge next up. And, as you have
22 experienced most recently with Loyd, could be transferred if
23 related.

24 I am aware of both Loyd cases and do not believe
10:59:17 25 that seeking declaratory judgment is sufficiently related to

1 the other, at the time, 29 cases on my docket.

2 So, Mr. Clements, it still resides on Judge Lioi's
3 docket, not because it's been ignored, but because it's
4 different, sufficiently enough, from the others. In fact,
10:59:39 5 there is another more similar to it based on my early
6 review, and that resides on Judge Adams' docket. So if
7 there is a more appropriate place to transfer it, that might
8 be the place. But again, you and the colleagues overseeing
9 those dockets are in the best place to make those decisions.

11:00:00 10 At this juncture, I don't see an intersection for
11 the declaratory judgment action filed by Plaintiff Loyd on
12 my docket. That might not always be the case.

13 I am not aware of the most recently filed case,
14 the one that ends 672, Mr. Clements, that you've said is on
11:00:21 15 Judge Adams' docket, but I'll make inquiry and see. Usually
16 my colleagues are pretty good about reviewing their own
17 dockets and making sure that I am aware, and I make an
18 assessment and happily will accept those that are related.
19 So thank you for making me aware of that one.

11:00:42 20 Anything more, Mr. Clements?

21 MR. CLEMENTS: Yes. Just one last comment, Your
22 Honor. We removed five cases that were pending in -- or
23 originally filed in Columbiana County Court of Common Pleas,
24 we removed those to federal court. There were five separate
11:01:02 25 actions. They have all been assigned to Your Honor.

1 I wanted to just draw this to your attention,
2 because, you know, with respect to the order that Your Honor
3 is going to enter with respect to consolidation and
4 whatnot -- and Ms. Rudzik, who is counsel for the plaintiffs
11:01:16 5 in those cases, may want to speak on behalf of her clients.
6 But the first response date in the cases before Your Honor
7 is with the Feezle matter based on the waivers that we
8 returned. That date is April the 10th.

9 With respect to the Columbiana County cases that
11:01:35 10 were filed in state court and removed, the time period for
11 our response is a little bit more accelerated there, and the
12 due date for that is April the 6th. So that's a little bit
13 earlier than the Feezle case on April the 10th. So I wanted
14 Your Honor to be aware of that.

11:01:52 15 But I did speak to Ms. Rudzik about that, and she
16 can comment if she wishes, but she was agreeable to either
17 tracking along with whatever the court decided with respect
18 to the implementation of a scheduling order for responses by
19 the defense, and otherwise agreeable to a 60-day extension
11:02:16 20 for Norfolk Southern to respond.

21 But I just wanted Your Honor to be aware that
22 there was this earlier date technically for a due date for
23 Norfolk Southern's response.

24 THE COURT: Thank you, Mr. Clements.

11:02:27 25 Thank you, Attorney Rudzik, for making yourself

1 visible to me.

2 If you have something to add. What I hear is
3 slight concern that even earlier than the April 10 response
4 date in the Feezle matter is the response date for at least
11:02:44 5 one or maybe more of those removed from state court that
6 have been filed by you, and the prospect of an extension of
7 time, Mr. Clements has expressed at least 60 days. I am
8 open to hearing from you.

9 I will share with you that if I haven't issued my
11:03:06 10 ruling that would stay the obligation to respond by the 6th,
11 something has gone wrong in my world. But if something does
12 go wrong in my world, would you be opposed to giving the
13 defense a greater period of time so that no response would
14 be due before the 10th of April, to be sure, but maybe even
11:03:31 15 beyond that?

16 MS. RUDZIK: We did speak, Your Honor, and we have
17 no problem with that.

18 THE COURT: Thank you. Appreciate your
19 cooperativeness.

11:03:40 20 Good points, Mr. Clements. Did you reach the end
21 of your list or is there more?

22 MR. CLEMENTS: That's it, Your Honor. Thank you.

23 THE COURT: All right. Thank you all. Again,
24 it's a pleasure. I am sorry about the circumstances that
11:03:52 25 have brought us all together, but I think we have among us

1 what's necessary to do the work that is required.

2 And I just look now to see if anyone is unmuting
3 or raising a hand to indicate a need to speak. I don't see
4 that.

11:04:14

5 Applaud yourselves a bit for what you've done this
6 morning. You've given me much that I've needed to complete
7 my work.

11:04:27

8 Await minutes on the docket, but the order will
9 come, and the early part of next week is my goal. Do take
10 care. The hearing is adjourned.

11 ALL COUNSEL: Thank you, Your Honor.

12 (Proceedings concluded at 11:04 a.m.)

13 - - -

14

15 C E R T I F I C A T E

16

17

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20

21 /s/ Mary L. Uphold April 6, 2023
22 Mary L. Uphold, RDR, CRR Date

23

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